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Issued in Washington, DC, on this 8th day of April 2004.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 04–8588 Filed 4–14–04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Clarification of Substituted Federal Enforcement for Parts of Missouri’s Permanent Regulatory Program and Findings on the Status of Missouri’s Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; clarification.

SUMMARY: On November 21, 1980, the Secretary of the Interior (the Secretary) conditionally approved the Missouri permanent regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On August 4, 2003, we, the Office of Surface Mining Reclamation and Enforcement (OSM), notified the Governor of Missouri that serious problems existed that were adversely affecting the Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program’s (MLRP) implementation and enforcement of the Missouri program. In accordance with the provisions of 30 CFR 733.12(f), we announced our decision, effective August 22, 2003, to institute direct Federal enforcement for those portions of the Missouri program that the MLRP could not adequately implement and enforce. With the substitution of Federal enforcement authority, we outlined a process by which Missouri could regain full authority for its program.

This document clarifies the portions of the Missouri program that we directly enforce and sets forth our findings regarding the status of those portions of Missouri’s program for which we required remedial actions.

This rule is being made effective immediately in order to expedite the actions required of the State to resume full authority for its approved program.

EFFECTIVE DATE: April 15, 2004.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460.

SUPPLEMENTARY INFORMATION:

- I. Background on the Missouri Program
- II. Clarification of OSM’s August 22, 2003, Decision to Substitute Federal Enforcement for Parts of the Missouri Program
- III. OSM’s Decision
- IV. Disposition of Comments
- V. Procedural Determinations

I. Background on the Missouri Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary conditionally approved the Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary’s findings, the disposition of comments, and conditions of approval, in the November 21, 1980, **Federal Register** (45 FR 77017). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, 925.16, 925.17, 925.18, and 925.19.

The Abandoned Mine Land Reclamation (AMLR) Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines

and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. Section 405(c) of the Act also requires States to have an approved State regulatory program before the Secretary can approve a State program for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary approved the Missouri plan on January 29, 1982. You can find background information on the Missouri plan, including the Secretary’s findings, the disposition of comments, and the approval of the plan in the January 29, 1982, **Federal Register** (47 FR 4253). You can find later actions concerning the Missouri plan and amendments to the plan at 30 CFR 925.25.

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. In a **Federal Register** notice dated September 29, 1982 (47 FR 42729), we invited States to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on our behalf. We approved Missouri’s assumption of the AMLR emergency program on June 24, 1998. You can find background information, including our findings, the disposition of comments, and the approval of the Missouri AMLR emergency program in the June 24, 1998, **Federal Register** (63 FR 34277).

On June 19, 2003, the MLRP notified us that the Missouri Legislature passed House Bill (HB) 6 that appropriated funds for the Missouri program. In HB 6, the Missouri Legislature did not fully fund the Missouri program for the period beginning July 1, 2003, and ending June 30, 2004. The Governor of Missouri signed the appropriation bill on May 30, 2003 (Administrative Record No. MO–664).

On July 2, 2003, we met with the MLRP at the Missouri Department of Natural Resources’ office in Jefferson City, Missouri (Administrative Record

No. MO-664.1). During the meeting, the MLRP made a presentation describing the recently approved appropriation bill. HB 6 contained a severe cut in general revenue dollars available as State matching funds for the regulatory program. The MLRP advised us that the moneys that are available for the regulatory program would only be used for bond forfeiture reclamation activities. Also, the MLRP advised us that the State Legislature appropriated funds for the AMLR program. In addition, the MLRP explained that as of July 18, 2003, existing regulatory program staff, with the exception of four full-time employees, would be transferred to other programs and that it would not be able to implement and maintain its inspection, enforcement, permitting, or bond release responsibilities under the currently approved Missouri program. The four full-time employees would perform the bond forfeiture reclamation activities that were funded by the State Legislature. The MLRP indicated that it would try to gain full program funding from the Missouri Legislature for fiscal year 2005.

On July 11, 2003, the MLRP notified the Missouri coal operators that the Legislature had decided, through the budget process, to withhold funding and staffing for the Missouri program. The MLRP also notified the operators that after July 18, 2003, it would no longer be available for surface coal mining and reclamation regulatory issues (Administrative Record No. MO-664.2).

On July 21, 2003, the Governor of Missouri notified us that the State of Missouri is experiencing difficult budget and revenue shortfalls (Administrative Record No. MO-664.3). As a result of the revenue shortfalls, he requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. He indicated that Missouri continues to have adequate funding and staff available to maintain design and reclamation efforts for bond forfeiture sites, as well as sufficient funding and staff to maintain the AMLR program, including the emergency program. He also indicated that he was hopeful his request would be temporary and that he would continue to work with the Legislature in an attempt to assure adequate funding for all of Missouri's regulatory program responsibilities.

On August 4, 2003, we notified the Governor of Missouri that we were obligated, in accordance with 30 CFR 733.12(e), to substitute Federal enforcement for those portions of the Missouri program that were not fully

funded and staffed (Administrative Record No. MO-664.4). We cited Missouri's failure to fund and staff the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities.

On August 22, 2003, we announced our decision to substitute Federal enforcement for portions of the Missouri program (68 FR 50944). On the same day, we announced a public comment period and opportunity for a hearing on Missouri's implementation of its program and our substitution of Federal enforcement. We did not hold a public hearing because no one requested one. The public comment period ended on September 22, 2003. We received comments from one industry group and the Missouri Land Reclamation Commission (Commission).

II. Clarification of OSM's August 22, 2003, Decision To Substitute Federal Enforcement for Parts of the Missouri Program

A. Direct Federal Enforcement of the Missouri Program

1. Effective August 22, 2003, we suspended the authority of the MLRP to implement all portions of the Missouri permanent regulatory program except bond forfeiture reclamation activities. We determined that the MLRP does have sufficient funding and staff to implement and maintain bond forfeiture reclamation activities. We also determined that the MLRP does not have adequate staff and resources to implement all other aspects of its program. In place of the MLRP's suspended authority, we substituted direct Federal enforcement and assumed responsibility to implement, administer, and enforce those portions of the Missouri program that were not fully funded and staffed, including inspection, enforcement, permitting, and bonding. After substituting direct Federal enforcement, we received a letter dated November 19, 2003, from the Missouri Land Reclamation Commission commenting that it would be beneficial for members of the public if we provide clarification for some of our August 22, 2003, decisions on direct Federal enforcement of the Missouri program (MO-664.15). We are, therefore, providing clarification on our August 22, 2003, decisions.

a. In the introductory paragraph of 30 CFR 925.17, we stated that the MLRP will have authority to take administrative actions to process outstanding violations to a final disposition (including issuing proposed assessments, assessing penalties, holding informal conferences and

hearings, and collecting penalties). However, any actions by the MLRP to terminate or vacate enforcement actions will not take effect until we approve them. In this document we are clarifying that the MLRP does not need our approval to terminate or vacate enforcement actions. We will conduct inspections of all permitted sites and, if a violation exists, we will take appropriate Federal enforcement action.

We also stated that with respect to bond forfeiture actions initiated before August 22, 2003, the MLRP will have the authority to perform bond forfeiture reclamation activities. In this document we are clarifying that bond forfeiture reclamation activities include, but are not limited to, issuing show-cause orders, revoking permits, initiating proceedings to declare bonds forfeited, and administering reclamation in lieu of bond forfeiture. The MLRP will have the authority to perform bond forfeiture reclamation activities initiated after August 22, 2003, if show-cause orders to revoke permits were initiated before August 22, 2003, and those show-cause orders subsequently result in forfeiture of the bond. We are revising the introductory paragraph of 30 CFR 925.17 to reflect this decision.

b. At 30 CFR 925.17(a), we specified that we will conduct inspections of all coal exploration and surface coal mining and reclamation operations, including bond release inspections, in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267, 1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. We are clarifying in this document that we will use the Federal inspection and enforcement requirements contained in the above referenced statutory and regulatory provisions to determine compliance with the substantive requirements of the Missouri program, including the performance standards contained in Missouri's laws and regulations. We are revising 30 CFR 925.17(a) to reflect this decision.

c. At 30 CFR 925.17(c), we provided that we will impose civil and criminal sanctions, as appropriate, for violations of the approved Missouri program in accordance with sections 517, 518, 521, 525, and 526 of SMCRA, 30 CFR parts 843 through 845, and 43 CFR part 4. We are clarifying in this document that we will impose civil and criminal sanctions for those violations that are issued by us. We are also correcting our regulation reference by adding a reference to 30 CFR parts 846 and 847 concerning individual civil penalties and alternative enforcement, respectively.

We are revising 30 CFR 925.17(c) to reflect this decision.

d. At 30 CFR 925.17(i), we specified that we will review and make decisions on performance bond release requests for new and existing permits in accordance with the Missouri program at section 444.875 of the Missouri Surface Coal Mining Law (MSCML) and 10 Code of State Regulations (CSR) 40–7.021. For existing bonds, we will make the required determinations for the amount of the bond to be released and submit the determinations to the MLRP for release. We are clarifying in this document that we will make the required determinations for the amount of the bond to be released and submit the determinations to the MLRP. The MLRP will present our bond release determinations for the amount of existing bonds to be released to the Missouri Land Reclamation Commission, who will make a final decision on the release. We are revising 30 CFR 925.17(i) to reflect this decision.

e. At 30 CFR 925.17(k), we provided that administrative and judicial review of our enforcement actions, permitting decisions, and performance bond determinations will be in accordance with 43 CFR part 4. We are clarifying in this document that administrative and judicial review of final bond release decisions made by the Commission for existing performance bonds will be subject to the procedures specified in Missouri's laws and regulations at section 444.875 of MSCML and 10 CSR 40–7.021(4). Administrative and judicial review of final bond release decisions made by us for new performance bonds will be subject to the procedures specified in the Federal regulations at 43 CFR part 4. We are revising 30 CFR 925.17(k) to reflect this decision.

2. Today we are revising 30 CFR 925.17 to clarify that on August 22, 2003, we also substituted direct Federal enforcement and assumed responsibility to implement, administer, and enforce those portions of the Missouri program concerning training, examination, and certification of blasters; areas unsuitable for mining; and small operator assistance.

a. We will review and issue decisions on applications for blaster certification in accordance with the approved Missouri program at sections 444.855.2(15)(d) and 444.905.4 of MSCML and 10 CSR 40–3.160. The applicants must submit OSM Form 74 when applying for blaster certification. Administrative and judicial review of our decisions will be in accordance with 43 CFR part 4.

b. We will review and issue decisions on petitions to have areas designated as

unsuitable for surface coal mining operations in accordance with the approved Missouri program at section 444.890 of MSCML and 10 CSR 40–5.020. Judicial review of our decisions will be in accordance with sections 526(a)(2) and (b) of SMCRA (30 U.S.C. 1276(a)(2) and (b)) and 30 CFR 775.13.

c. We will review and issue decisions on applications for small operator assistance in accordance with section 507(c) of SMCRA (30 U.S.C. 1257(c)) and the approved Missouri program at 10 CSR 40–8.050. Administrative and judicial review of our decisions will be in accordance with 43 CFR part 4.

B. Findings on the Status of the Remedial Actions Codified at 30 CFR 925.18

In order for the MLRP to demonstrate its intent and capability to fully implement the Missouri program as approved by the Secretary, we required the MLRP to complete certain remedial actions, which we codified at 30 CFR 925.18.

1. 30 CFR 925.18(a)—By August 22, 2003, the MLRP was to submit to us a list of all outstanding enforcement actions specifying the abatement date set for each cited violation.

On July 22, 2003, the Missouri Attorney General's office provided us with a complete copy of all outstanding enforcement actions (Administrative Record No. MO–664.13).

The notices of violation and cessation orders specified the abatement date set for each cited violation. Therefore, we are removing the required remedial action codified at 30 CFR 925.18(a).

2. 30 CFR 925.18(b)—In accordance with the requirements of the approved Missouri program, the MLRP was to complete administrative disposition of all enforcement actions that were initiated before August 22, 2003. We are clarifying in this document that the MLRP may conduct penalty assessments, hold informal conferences and hearings, collect penalties, and terminate or vacate enforcement actions. We will inspect the sites and if a violation exists, we will take appropriate Federal enforcement action.

On November 25, 2003, the MLRP notified us that it had completed administrative disposition of five enforcement actions that were initiated before August 22, 2003 (Administrative Record No. MO–664.17). Additionally, on February 18, 2004, the MLRP notified us that it had completed administrative disposition of six more enforcement actions (Administrative Record No. MO–664.18A).

3. 30 CFR 925.18(c)—Not later than September 22, 2003, the MLRP was to

submit to us a plan to reassume full authority for the Missouri program.

On September 19, 2003, the MLRP submitted information on the time frames necessary to reassume full authority for the Missouri program (Administrative Record No. MO–664.11). The MLRP indicated that the first opportunity to correct the funding and staffing shortage would be in January 2004 when the State Legislature reconvenes. At that time, the Legislature would decide whether or not to restore the necessary funding and staff for the MLRP. The earliest the MLRP could reassume authority will be July 1, 2004. Based on the information provided by the MLRP, we are changing the date for submitting a specific plan that addresses funding, staffing, and adherence to the provisions of the Missouri program. We are changing the date from September 22, 2003, to within 30 days of the date on which we have received and acknowledged an accurate description of available funding for the regulatory program. We are revising the required remedial action codified at 30 CFR 925.18(c) to reflect this decision.

4. 30 CFR 925.18(d)—Starting on November 20, 2003, the MLRP was to submit to us a report once every three months on its progress in obtaining full funding for the Missouri program.

After considering the information on time frames for obtaining funding for the Missouri program that the MLRP sent to us on September 19, 2003, we are changing the starting date and reporting frequency for this report from November 20, 2003, to April 1, 2004, and from every three months to monthly. We are revising the required remedial action codified at 30 CFR 925.18(d) to reflect this decision.

5. 30 CFR 925.18(e)—Effective September 8, 2003, the MLRP was to take all steps necessary to ensure that all records, documents, correspondence, inspector logs, etc. were made secure and to supply copies of all documents to us upon request.

Beginning in July 2003, the MLRP provided access to all materials that were requested by us (Administrative Record No. MO–664.13). The MLRP also provided us with copies of all items, such as permit review documents and bond release applications, that were pending when the funding for the State program was lost. Therefore, we are removing the required remedial action codified at 30 CFR 925.18(e).

III. OSM's Decision

Based on our discussions in II.A, we are amending 30 CFR 925.17 to clarify our substitution of direct Federal enforcement for parts of the Missouri

program. We are also, based upon our findings in II.B, amending 30 CFR 925.18 to clarify and to modify the schedule for certain state remedial actions.

We will continue monitoring MLRP's progress in resuming full authority for all aspects of the approved Missouri program. Failure by the MLRP to seek and obtain full authority for the Missouri program or failure by the MLRP to perform satisfactorily in the areas in which it retains enforcement authority will result in additional Federal action.

We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a)(3) of SMCRA requires that a State's program demonstrate that the State regulatory authority has sufficient administrative and technical personnel and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. Effective July 18, 2003, Missouri no longer had sufficient administrative and technical personnel or adequate funding to implement, maintain, and enforce its approved program. Therefore, we substituted Federal enforcement for parts of the Missouri program effective August 22, 2003. The clarifications and modifications made in this document are necessary to ensure the protection of the public through effective control of surface coal mining and reclamation operations in the State.

IV. Disposition of Comments

During the public comment period, we received comments from Continental Coal, Inc. (CCI) (Administrative Record No. MO-664.12) and the Missouri Land Reclamation Commission (Administrative Record Nos. 664.15). These comments were reviewed and considered by OSM in making the decisions announced today. This document provides a summary and response to the issues raised by the commenters.

A. CCI provided several comments on our decision to substitute Federal enforcement instead of withdrawing approval of the State program.

Comment 1: CCI's first comment dealt with us not providing sufficient justification for not withdrawing approval of the Missouri program. CCI felt that Missouri's intent to take steps to resolve the funding and staffing issues is not sufficient justification considering the budget difficulties in Missouri. CCI stated, "While the intent of the MLRP may be valid, truthful and well-intentioned, it is a function of budget realities, legislative desire, and

legislative direction that will dictate restoration of funding and participation."

We agree that no one can predict State legislative actions. However, as discussed in the August 22, 2003, final rule (68 FR 50944-50945), both the MLRP and the Governor of Missouri indicated intent to take steps to resolve the funding and staffing issues of the Missouri program. We also considered the intent of Congress when making our decision to substitute Federal enforcement rather than withdrawing program approval. At section 101(f) of SMCRA, Congress expressed its belief that because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to SMCRA should rest with the States. In support of this congressional intent, we expressed our belief that it is preferable that States hold the primary responsibility for regulating surface coal mining and reclamation operations in the August 22, 2003, final rule (68 FR 50944). As stated in the August 22, 2003, final rule (68 FR 50945), failure by the MLRP to seek and obtain full authority for the Missouri program or failure by the MLRP to perform satisfactorily in the areas in which it retains enforcement authority will result in additional Federal action.

Comment 2: CCI's second comment dealt with us providing the MLRP with the authority to take administrative actions to process outstanding violations to a final disposition. CCI does not believe the Missouri General Assembly provided appropriation for these activities.

For example, your notice provides that: The MLRP will have the authority to take administrative actions to process outstanding violations to a final disposition (including issuing proposed assessments, assessment of penalties, holding of formal conferences and hearings, and collecting penalties). Effectively, there is a presumption that MLRP will misappropriate funds to carry forth this action, which has been unappropriated. While the cause "will" does provide the choice, OSM does not provide in its notice the answer to the obvious question, "What if they can't?" We contend that Missouri cannot spend resources in this area without proper appropriation, and for the federal government to expect them to do so is inappropriate.

As clarified in section II above, the MLRP may terminate or vacate enforcement actions initiated before August 22, 2003. We would inspect the applicable sites and determine whether Federal enforcement actions would

be issued to replace those terminated or vacated by the State. Missouri continues to have authority to process outstanding violations to final disposition. Any enforcement actions we take will be under the Federal regulations.

We also clarified in section II above that the bond forfeiture reclamation activities that were fully funded include, but are not limited to, issuing show-cause orders, revoking permits, initiating proceedings to declare bonds forfeited, and administering reclamation in lieu of bond forfeiture. Missouri has authority to perform bond forfeiture reclamation activities initiated before August 22, 2003, and bond forfeiture reclamation activities initiated after August 22, 2003, if show-cause orders to revoke permits were initiated before August 22, 2003, and those actions subsequently result in forfeiture of the bond.

Comment 3: CCI's third comment concerned our decision to enforce Missouri's statutes and regulations. CCI stated, "We are also troubled by OSM's apparent strategy to utilize Missouri statutes (see 30 CFR Part 925.17(e)) and Missouri regulations in their reviews." CCI does not believe that the Federal government can enforce State law. CCI pointed out that Missouri law provides unique appeal procedures.

We disagree that we cannot enforce the Missouri program. The Federal regulation at 30 CFR 733.12(f), concerning substituted Federal enforcement, requires us to enforce the State program. A State program is a compilation of State statutes, regulations, and policy. We may also adopt additional regulations if necessary to enforce the State program. CCI is correct that Missouri law provides unique appeal procedures. It has been our policy since 1984 in substituting Federal enforcement to use Federal administrative review regulations in place of the State's administrative review process. Therefore, we adopted the Federal statutes and regulations pertaining to administrative review by reference at 30 CFR 925.17. Also, the Federal regulation at 30 CFR 733.12(f)(2)(iii) requires us to conduct inspections and issue notices, orders and assessments of penalties in accordance with the Federal regulations at subchapter L. Therefore, we also adopted these regulations by reference at 30 CFR 925.17.

B. The Commission provided a comment on program funding and comments on clarification of the August 22, 2003, **Federal Register** final rule.

Comment 1. The Commission's first comment concerned State funding for Fiscal Year 2004. In its letter of

November 19, 2003, the Commission stated that the Missouri General Assembly decreased the amount of State funding for the State's surface coal mining program for Fiscal Year 2004, as compared with Fiscal Year 2003, but monies were in fact appropriated for the activities that are being conducted by the Commission's staff in Fiscal Year 2004.

We agree with this comment in that funds were appropriated for the bond forfeiture reclamation activities that are being conducted by the MLRP. These activities include issuing show-cause orders, revoking permits, initiating proceedings to declare bonds forfeited, and administering reclamation in lieu of bond forfeiture.

Comment 2. The Commission's second comment concerned clarification of our August 22, 2003, decisions on direct Federal enforcement of the Missouri program. The Commission stated that it believes that it would be beneficial for members of the public to be made aware of the clarifications obtained from us by the Commission's staff regarding activities to be undertaken directly by us in Missouri during the interim period prior to reinstatement of full funding for the Missouri program.

We agree with the Commission that clarification of our August 22, 2003, substitution of Federal enforcement is needed. Therefore, we provided clarification of our actions and the State's remedial actions in section II above and in 30 CFR 925.17 and 925.18.

V. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of

SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Missouri program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Missouri program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under

Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that the substitution of Federal enforcement for portions of Missouri's permanent regulatory program will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule is not expected to result in additional costs to the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the rule is not expected to result in additional costs to the regulated industry.

Unfunded Mandates

The substitution of Federal enforcement for portions of Missouri's permanent regulatory program will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the nature of the action being taken.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 5, 2004.

Patricia E. Morrison,

Acting Assistant Secretary, Land and Minerals Management.

■ For the reasons set out in the preamble, 30 CFR part 925 is amended as set forth below:

PART 925—MISSOURI

■ 1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

■ 2. Section 925.17 is amended by revising the introductory paragraph and paragraphs (a), (c), (i), and (k) and adding paragraphs (l), (m), and (n) to read as follows:

§ 925.17 Direct Federal Enforcement of the Missouri Program.

Starting on August 22, 2003, OSM will directly implement, administer and enforce the Missouri program requirements to the extent outlined below in accordance with the enforcement provisions of SMCRA and the Federal regulations. The authority of the Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) to implement the Missouri regulatory program is suspended with regard to those provisions listed below, with the following exceptions. With respect to State enforcement actions initiated before August 22, 2003, the MLRP will have authority to take administrative actions to process outstanding violations to a final disposition (including issuing proposed assessments, assessing penalties, holding informal conferences and hearings, and collecting penalties). For enforcement actions that are terminated or vacated, OSM will inspect the sites and if a violation exists, we will take appropriate Federal enforcement action. With respect to bond forfeiture actions initiated before August 22, 2003, the MLRP will have authority to perform bond forfeiture reclamation activities. Bond forfeiture reclamation activities include, but are not limited to, issuing show-cause orders, revoking permits, initiating proceedings to declare bonds forfeited, and administering reclamation in lieu of bond forfeiture. The MLRP will have authority to perform bond forfeiture reclamation activities initiated after August 22, 2003, if show-cause orders to revoke permits were initiated before August 22, 2003, and those show-cause orders subsequently result in forfeiture of the bond.

(a) OSM will conduct inspections of all coal exploration and surface coal mining and reclamation operations, including bond release sites, in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267, 1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. With respect to enforcement actions initiated by the MLRP before August 22, 2003, OSM will conduct follow-up inspections at all sites with outstanding violations on or after the abatement dates specified in the State-issued notices of violation. As required by 30 CFR 733.12(f)(2)(iii), OSM will conduct inspections to determine compliance with the substantive requirements of the approved Missouri program.

* * * * *
(c) OSM will impose civil and criminal sanctions, as appropriate, for violations of the Missouri program in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267, 1268, 1271, 1275, and 1276), 30 CFR parts 843 through 847, and 43 CFR part 4 for those violations issued by OSM.

* * * * *
(i) OSM will review and make decisions on performance bond release requests for new and existing permits in accordance with the Missouri program at section 444.875 of MSCML and 10 CSR 40-7.021. For existing bonds, OSM will make the required determinations for the amount of the bond to be released and will submit the determinations to the MLRP. The MLRP will present OSM's bond release determinations for the amount of the bond to be released to the Missouri Land Reclamation Commission, who will make a final decision on the release.

* * * * *
(k) Administrative and judicial review of OSM's enforcement actions, performance bond release determinations, and final decisions on all other actions, including permitting, certification of blasters, and small operator assistance, will be in accordance with 43 CFR part 4. Administrative and judicial review of final bond release decisions made by the Commission for existing performance bonds will be subject to the procedures specified in the Missouri program at section 444.875 of MSCML and 10 CSR 40-7.021(4).

(l) OSM will review and issue decisions on applications for blaster certification in accordance with the approved Missouri program at sections 444.855.2(15)(d) and 444.905.4 of MSCML and 10 CSR 40-3.160. The applicants must submit OSM Form 74 to

OSM when applying for blaster certification. Administrative and judicial review of our decisions will be in accordance with 43 CFR part 4.

(m) OSM will review and issue decisions on petitions to have areas designated as unsuitable for surface coal mining operations in accordance with the approved Missouri program at section 444.890 of MSCML and 10 CSR 40-5.020. Judicial review of our decisions will be in accordance with sections 526(a)(2) and (b) of SMCRA (30 U.S.C. 1276(a)(2) and (b)) and 30 CFR 775.13.

(n) OSM will review and issue decisions on applications for small operator assistance in accordance with section 507(c) of SMCRA (30 U.S.C. 1257(c)) and the approved Missouri program at 10 CSR 40-8.050. Administrative and judicial review of our decisions will be in accordance with 43 CFR part 4.

■ 3. Section 925.18 is amended by removing and reserving paragraphs (a) and (e) and revising paragraphs (b), (c), and (d) to read as follows:

§ 925.18 State Remedial actions.

* * * * *

(a) [Removed and reserved]

(b) In accordance with the requirements of the approved Missouri program, the MLRP will complete administrative disposition of all enforcement actions that were initiated before the effective date of this decision. The MLRP may conduct penalty assessments, hold informal conferences and hearings, collect penalties, and terminate or vacate enforcement actions.

(c) Within 30 days of the date on which OSM has received and acknowledged an accurate description of available funding for the regulatory program, the MLRP must submit to OSM a plan to reassume full authority for the Missouri program. At a minimum, the proposal must provide specific and adequate provisions that address the following problems:

* * * * *

(d) Starting on April 1, 2004, the MLRP must submit to OSM a report once a month on its progress in obtaining full funding for the Missouri program.

(e) [Removed and reserved]

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